

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
WASHINGTON, DC 20591

In the matter of the petition of

EL AL ISRAEL AIRLINES

for an exemption from § 129.28(c)
of Title 14, Code of Federal Regulations

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Regulatory Docket No. FAA-2003-14709

DENIAL OF EXEMPTION

By electronic submission received March 17, 2003, Mr. Arie Fruchter, Vice President, Maintenance and Engineering, El Al Israel Airlines (El Al), Ben Gurion Airport, POB 41, 70100 Israel, petitioned the Federal Aviation Administration (FAA) on behalf of El Al for an exemption from Title 14 of the Code of Federal Regulations (14 CFR) § 129.28. The proposed exemption would permit El Al to operate three Boeing 747-200 classic airplanes after the April 9, 2003, compliance date for reinforced flight deck doors.

The petitioner requests relief from the following section:

Section 129.28(c) states, in pertinent part, that after April 9, 2003, no foreign air carrier covered by § 129.1(a) may operate a passenger carrying transport category airplane, within the United States, unless the airplane's flight deck door installation meets the requirements of paragraphs (c)(1) and (2) of this section or an alternative standard found acceptable to the Administrator.

The petitioner supports its request with the following information:

The petitioner states that El Al is an Israeli flag carrier operating scheduled daily flights to the United States. The petitioner states that the core of El Al's scheduled passenger fleet for service to the U.S. is based on Boeing 777-200ER, Boeing 747-400 and Boeing 767ER aircraft, which will comply with the requirements of §129.28 by April 9, 2003.

The petitioner states that El Al requests a 12-month exemption for three Boeing 747-200 airplanes which are still operating some of its flights to the U.S. The petitioner states that one is a passenger airplane and two are convertible airplanes. The petitioner states the passenger airplane is scheduled to retire from service within 12 months while the convertible airplanes, which are mainly used for cargo operations, will be operated for four months a year in passenger configuration.

The petitioner states the reasons for the petition are economic. El Al would be utilizing financial resources in a way that will provide a better security level on its flights. The petitioner states that the estimated cost for enhanced cockpit doors has increased dramatically from approximately \$30,000 to over \$200,000 per aircraft. The petitioner states that security and budget resources are limited and purchasing the enhanced cockpit doors for the Boeing 747-200 aircraft will have a negative influence on its security resources and the security level provided to El Al's Boeing 747-200 passengers.

The petitioner believes that the existing security approach on the Boeing 747-200 aircraft is an effective and proven one. The petitioner states that due to the unique configuration of El Al's Boeing 747-200 aircraft, the addition of the new enhanced cockpit door will not add any security level beyond the current level available today. The petitioner states that El Al's existing pre-boarding, as well as on-board security procedures, are coordinated with their local International Security Coordinator and is well known to the Transportation Security Administration (TSA).

The FAA has determined that good cause exists for waiving the requirement for Federal Register publication because any delay in acting on this petition would be detrimental to El Al.

The FAA's analysis/summary is as follows:

The FAA has fully considered all of the petitioner's supporting information, and finds that a grant of exemption is not in the public interest and could adversely affect safety. Section 129.28(c) and (d) require improved flight deck security and operational and procedural changes to prevent unauthorized access to the flight deck on passenger-carrying aircraft and some cargo aircraft operated by foreign carriers under the provisions of part 129.

On September 11, 2001, the U.S. experienced terrorist attacks when aircraft were commandeered and used as weapons. These actions demonstrated that there is a need to improve the design and operational and procedural security of the flight deck. On November 19, 2001, Congress enacted Public Law 107-71, the Aviation and Transportation Security Act (the Act), which specifies that improved flight deck security must be applied to aircraft operating in air transportation.

Section 104 of the Act directed the FAA to issue a final rule, without seeking public comment prior to adoption, addressing the security requirement for aircraft that are currently required to have flight deck doors.

In response to section 104(a)(1) of the Act, the FAA issued Amendment 121-288 to 14 CFR Part 121, which requires that certain U.S. air carriers install reinforced flight deck doors that provide intrusion and ballistic penetration resistance (67 FR 2881, January 15, 2002). As discussed in the preamble to Amendment 121-288, the FAA expects that foreign air carriers conducting service to and from the U.S. under part 129 would have flight deck security measures commensurate with those of U.S. carriers. With Part 121 flight deck security improved, the FAA is concerned that Part 129 operations would be more attractive targets for terrorist actions if security was not similarly improved. Amendment No. 121-288 solicited comments on this issue and clearly states that the FAA intended to have consistent flight deck door security requirements for Parts 121 and 129. The FAA received no comments objecting to the stated intention to adopt consistent standards.

On June 21, 2002, the FAA issued Amendment No. 129-33, which requires that foreign air carriers operating under Part 129 install reinforced doors that provide intrusion and ballistic penetration resistance (67 FR 42450, June 21, 2002). Part 129 was amended with the objective of ensuring that foreign operators have consistent flight deck security with those operating under Part 121.

On December 30, 2002, Amendment No. 129-36 was issued to clarify the FAA's intent with respect to applicability of the reinforced door requirements to certain types of aircraft and foreign air carrier operations. Amendment No. 129-36 was issued after reviewing several issues raised at a public hearing held on July 30, 2002, and comments were received as a result of the June 21, 2002, final rule. Amendment No. 129-36 applies to transport category airplanes originally type certificated with 20 or more passenger seats and certain transport category cargo airplanes that have a door installed between the pilot compartment and any other occupied compartment on or after June 21, 2002, operated within the U.S. except for over-flights. Additionally, it requires that operators adopt operational changes restricting access to the flight deck in flight.

The FAA has discussed its intent to have consistent flight deck door security requirements for parts 121 and 129 at numerous international settings. The FAA finds that it is unacceptable to create two levels of flight deck protection for the same operations to and from U.S. airports. It would be irresponsible to expose passengers, and those on the ground, to greater risks based solely upon the country of registration of the aircraft. To meet this goal of corresponding protection, it is essential that the standards be imposed at the same time. If the requirements do not have a synchronized compliance time, the security risk will be shifted to the unprotected aircraft. Unsynchronized implementation of the security measures will not create a more attractive target for terrorists.

The FAA finds that April 9, 2003, is a firm date. Foreign air carriers have been aware of the requirement for U.S. carriers for 18 months and for Part 129 operations since June 21, 2002. Security considerations overshadow the burden on individual operators who have reasons to request an exemption.

In evaluating this petition for an exemption, the FAA has fully considered the economic difficulties hindering the petitioner from bringing its airplanes into compliance with the affected section. The FAA and the Transportation Security Administration (TSA) have also considered the additional security procedures taken by petitioner. The FAA finds, however, that these economic difficulties and security measures are not the basis upon which to grant an exemption. Safety and security requires that these improvements must be installed in each airplane.

Thus, after fully considering all of the petitioner's supporting information, and the reasons that necessitate the requirements set forth in the affected section, the FAA finds that the petitioner has failed to show how its proposed exemption would be in the public interest.

The FAA also finds that the petitioner has failed to show how its proposed exemption would provide a level of safety equal to that provided by the rule from which the exemption is sought. An airplane operated in non-compliance with §129.28(c) the affected sections, is not as safe as an airplane that is operated in compliance with the §129.28(c).

In consideration of the foregoing, and with the concurrence of TSA, I find that a grant of exemption would not be in the public interest. Therefore, in accordance with the authority contained in 49 U.S.C. §§ 40113 and 44701 delegated to me by the Administrator, the petition from El Al Israel Airlines for an exemption from § 129.28(c) is hereby denied.

Please note that in an effort to allow the public to participate in tracking the FAA's rulemaking activities, we have transitioned to the Department of Transportation's online Docket Management System (DMS) at <http://dms.dot.gov>. This new docket system enables interested persons to submit requests to, view requests on, and download requests from the DMS to comply with 14 CFR § 11.63. Please submit future requests through the DMS.

Issued in Washington, DC, on April 7, 2003.

/s/

Louis C. Cusimano
Acting Director, Flight Standards Service